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No. 81-2406

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1982

CITY OF POLSON, MONTANA,

Petitioner,

v.

CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD RESERVATION, MONTANA, et al.,

Respondents.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Ninth Circuit

BRIEF OF LAKE COUNTY, MONTANA, et al., AND THE STATES OF NEBRASKA, OKLAHOMA, AND UTAH AS AMICI CURIAE IN SUPPORT OF PETITION

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(Additional Amici and counsel listed on inside front cover)

The following States, by their respective Attorneys General, join in the views expressed herein:

State of Nebraska
Honorable Paul L. Douglas
Attorney General
State Capitol
Lincoln, Nebraska 68509

State of Utah
Honorable David L. Wilkinson
Attorney General
236 State Capitol
Salt Lake City, Utah 84114

State of Oklahoma
Honorable Jan Eric Cartwright
Attorney General
112 State Capitol
Oklahoma City, Oklahoma 73105

The following counties join in the views expressed herein:

Clearwater County, Minnesota
Mahnomen County, Minnesota
Glacier County, Montana
Sioux County, North Dakota
Dewey County, South Dakota
Ziebach County, South Dakota
Duchesne County, Utah
Uintah County, Utah

Certain other interested States and Counties did not have an opportunity to fully examine the merits of the question presented prior to the printing of this Brief. The Office of the Clerk will be advised directly if those States or Counties elect to join in the views expressed herein.

The States and Counties joining herein have submitted this brief because of their interest in the manner in which questions of Indian reservation status are decided by the courts. The States and Counties share the concern of the City of Polson that this area of the law is in need of further resolution by this Court and that the decision of the court below ought to be reversed.

The question of reservation status is of particular interest to states and counties containing areas which were originally established as Indian reservations, since the extent to which the states and their political subdivisions may exercise jurisdiction within such an area depends to a significant extent on whether the area continues to be a legally established reservation. Within any existing reservation area, states and their subdivisions lack a considerable degree of regulatory and taxation authority. See, e.g., Bryan v. Itasca County, 426 U.S. 373 (1976). In addition, in those states which are not covered by Public Law 280 (18 U.S.C. § 1162), 28 U.S.C. § 1360),[1] the general civil and criminal jurisdiction of state and local governments is severely restricted. See, e.g., DeCoteau v. District County Court, 420 U.S. 425, 427 n.2 (1975). Specifically, Lake County has a special interest in this case because a substantial portion of the County is included within the original Flathead Reservation area at issue in this case. Lake County, therefore,

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1. Such States include Oklahoma and Utah. Also, as explained in the Petition at 6 n.2, Public Law 280 applies only in part to the Flathead area.

has the same particular jurisdictional problems as does the City of Polson. See Petition at 5-6. The interest of certain of the other Counties arises because they are presently involved in litigation regarding similar statutes affecting original reservation areas within their boundaries. See Bartlett v. Solem, No. 82-1582 (8th Cir.) (appeal pending) (Sioux, Corson, Dewey, and Ziebach Counties); Ute Indian Tribe v. Utah, 521 F. Supp. 1072 (D. Utah 1981), appeal pending, Nos. 81-1827 and 81-1901 (10th Cir.) (Duchesne and Uintah Counties); White Earth Band of Chippewa Indians v. Minnesota, ____F.2d ____, Nos. 81-1805, 81-1833, 81-1861, 81-1862 (8th Cir., May 14, 1982) (Clearwater and Mahnomen Counties).

The amici States and Counties, like the Petitioner, believe that recent judicial interpretations of Indian surplus lands acts have been inconsistent and confused, despite this Court's pronouncements in DeCoteau v. District County Court, 420 U.S. 425 (1975), and Rosebud Sioux Tribe v. Kneip, 430 U.S. 584 (1977). See Petition at 7-9. The various decisions of the courts below, even those within particular circuits, cannot be reconciled with one another nor with the decisions of this Court.

This situation is amply illustrated by the case at hand, in which the Ninth Circuit held that the 1904 surplus lands statute in question cannot be likened to one passed the same day and interpreted in Rosebud, because of a difference in language between the statutes. In so doing, however, the court failed to acknowledge the clear holding of this Court in Rosebud that language of the type used in the Flathead statute is not dispositive

and is entirely consistent with a finding of disestablishment. See Petition at 23, 26.

Another illustration of the present confusion is the situation regarding the Cheyenne River Indian Reservation in South Dakota. Since the passage in 1908 of a surplus lands act regarding that reservation, there have been no fewer than ten published opinions commenting on the effect of that legislation, and the matter has still not been resolved. In recent years, the South Dakota Supreme Court and the Eighth Circuit Court of Appeals have been exchanging opposing decisions on the matter. Compare State v. Janis, 317 N.W.2d 133 (S.D. 1982), and Stankey v. Waddell, 88 S.D. 104, 256 N.W.2d 117 (1977), with United States v. Dupris, 612 F.2d 319 (8th Cir. 1979), vacated mem., 446 U.S. 980 (1980), and United States ex rel. Condon v. Erickson, 478 F.2d 684 (8th Cir. 1973).

Under these circumstances, and because of the profound jurisdictional significance of decisions of this type, the amici States and Counties feel that the questions involved in this case merit review by this Court. The States and Counties therefore concur in the arguments advanced in the Petition for a Writ of Certiorari and urge that the Petition be granted.

Respectfully submitted,

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September 3, 1982

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